
(2008) 06 OHC CK 0052
In the Orissa High Court
Case No : Writ Petition (C) No. 12517 of 2007

Niranjan Badu and Others	Vs	APPELLANT
State of Orissa and Others		RESPONDENT

Date of Decision : 24-06-2008

Acts Referred:

Orissa Estates Abolition Act, 1951 — Section 6, 7, 8(1)

Citation : (2008) CLT 379 Supp

Hon'ble Judges : B.P. Ray, J;A.S. Naidu, J

Bench : Division Bench

Advocate : K.K. Jena, A.K. Mohapatra and S.N. Das, for the Appellant; A.K. Rath, for Party No. 5, A.R. Das, R.N. Behera, M.C. Swain, S.K. Nanda(I), B. Mohapatra, N. Swain and S.N. Sahoo for Party No. 6, for the Respondent

Judgement

A.S. Naidu, J.—The order dated 29-5-2007 (Annexure-2) passed by the Additional District Magistrate, Khurda in OEA Appeal No. 1 of 2006 arising out of order dated 18-6-2004 (Annexure-I) passed by the Tahsildar, Bhubanesewar in OEA Case No. 59 of 1991 is assailed in this Writ Petition.

2. Lands measuring Ac.6.700 dec. appertaining to Sabik Khata No. 1693 stood recorded in the names of Basudev Badu and Ors. under "Chirasthayee Tanki" status under "Niz Dakhal" Khata of the ex intermediary Lord Lingaraj Mahaprabhu, Marfat - its Trust Board. It is alleged that the recorded tenants, i.e. Badu family, were all along in possession of the lands as tenants and after vesting of the estate and in course of last settlement operation, Ac.2.437 of lands situated in village Rajarani were recorded in favour of Artatrana Badu and Ors. under "Be-Bandobasti" status with share-noting of other co-sharers. According to the Petitioners, after vesting of the estate with effect from 18-3-1974 in consonance with Section 8(1) of the Orissa Estates Abolition Act they being in possession of the lands as tenants were to be deemed as tenants under the State. Accordingly Tenants" Ledger was opened in their names and rent was realized from them.

3. While matter stood thus, in the year 1991 on the basis of a petition filed, the Tahsildar initiated a "Be-Bandobasti" Case, numbered as 59 of 1991, and taking note of the prolonged occupation of the lands by the Petitioners and as no objection was received from the ex-intermediary, deity Lord Lingaraj Mahaprabhu, by order Annexure-1 settled the lands with the Petitioners under Raiyati status with effect from the date of vesting with back rent, cess, Salami, etc. but then subject to confirmation of the order by the Sub-Collector, Bhubaneswar. The Sub-Collector by a bald order confirmed the order of settlement passed by the Tahsildar. Coming to know about the order, an Objection Case was filed by the Deity through its Trust Board.

4. The Sub-Collector, Bhubaneswar after issuing notice to the parties and coming to the conclusion that the order passed by the Tahsildar was under misconception of law by order dated 23-11-2004 recalled the order of confirmation and remitted the matter back to the Tahsildar for de novo disposal. Being aggrieved by the said order of the Sub-Collector, the Petitioners filed OEA Appeal Case before the Addl. District Magistrate, Khurda (for short "ADM") which was registered as OEA Appeal No. 1 of 2006. The ADM after threadbare discussion of the facts came to the conclusion that the Tahsildar had erred in settling the lands with the Petitioners and that the Sub-Collector without due application of mind had baldly confirmed the order of the Tahsildar, although at a later stage being aware of the error committed by him recalled his order and remitted the matter back to the Tahsildar for de novo disposal. The ADM further held that the scenario of facts led to the conclusion that without affording opportunity of hearing to the Deity, the Tahsildar has passed the order With regard to settlement of the land; and that under the OEA Act or the Lease Principles there was no provision for conferring Raiyati status on a tenant. On the basis of such conclusions the ADM dismissed the OEA Appeal, vide his order Annexure-2.

5. Learned Counsel for the Petitioners assails the order Annexure-2 mainly on the ground that under the OEA Act an ADM is not an appellate authority and, as such, the appeal preferred before the ADM, Khurda was not maintainable. Further, after approving the order of settlement passed by the Tahsildar, the Sub-Collector had become functus officio and had no jurisdiction to recall his order. For such infirmities he submitted that the order of the Sub-Collector dated 23-11-2004 as well as the order of the ADM, vide Annexure-2 are liable to be quashed.

6. Learned Counsel appearing for the Deity Lord Lingaraj, on the other hand, submitted that within the four comers of the OEA Act there is no provision for settlement of a land in favour of a tenant with Raiyati status. Thus the Tahsildar had committed error apparent on the face of the record and the order passed by him could not be sustained. Be further submitted that the Petitioners having themselves preferred an appeal before the ADM against the orders passed by the Tahsildar and the Sub-Collector, are estopped from raising a stand that the ADM had no jurisdiction to entertain the appeal.

7. This Court heard learned Counsel for the parties and meticulously perused the pleadings as well as the documents annexed thereto. According to the Petitioners they were tenants under the ex intermediary and were possessing the lands as such on the date of vesting. If the said assertion is true, tenancy right being protected against vesting, the Petitioners were to be deemed to be tenants under the State. Under the OEA Act there is no provision to settle a land with Raiyati status, or, as a matter of fact; with any status in favour of a tenant. On the other hand, the said Act stipulates that a tenant inducted by an ex intermediary if found in possession of the land on the date of vesting would be deemed to be a tenant under the State. This provision of law was not kept in mind by the Tahsildar. That apart, it appears from the order of the Tahsildar, vide Annexure-1, that without hearing the Deity which was the ex intermediary or adjudicating the dispute as to induction of the Petitioners or their ancestors as tenants, the order settling the lands with the Petitioners was passed. Thus there was clear violation of the principles of natural justice and equity.

8. There is no provision under the OEA Act for initiation of any proceeding with regard to acceptance of tenants or settlement of land with tenants. As stated earlier, Section 8(1) of the Act contains a deeming provision under which a person inducted as tenant under an ex intermediary was to be deemed as a tenant under the State, of course if he satisfies the authorities in that regard. Such satisfaction of the authorities was to be subjective and could be arrived at by administrative enquiry, and not by a quasi-judicial enquiry. Thus the order of the Tahsildar, vide Annexure-I, settling the lands in favour of the Petitioners with Raiyati status, that too without hearing the ex intermediary could not be sustained. The Sub-Collector also without applying his judicial mind mechanically accorded approval to the order Annexure-I. Later-on of course above being made by the ex intermediary, the Sub-Collector being aware of the error committed by him recalled his order according approval to the order of the Tahsildar.

9. Law is no more *res integra* that a court or a tribunal cannot be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim (see *United India Insurance Company Ltd. v. Rajendra Singh and Ors.* reported in AIR 2006 SC 1167). Even otherwise, if an illegality comes to the notice, exercising supervisory jurisdiction this Court can rectify the same.

10. In the case at hand, as stated earlier, the stand of the Petitioners that they were tenants under the ex intermediary was disputed by the ex intermediary. That apart, there was no provision under the OEA Act to settle a land with a tenant. The Lease Principles do not deal with settlement of land in favour of tenants, but deal with settlement of "Be-Bandobasti" lands in favour of ex intermediaries on their failure to file petition for settlement of lands under Sections 6 and 7 of the OEA Act. The word "Be-Bandobasti" relates to status of a property and not with regard to a tenancy right. A conjoint reading of Sections 6 and 7 vis-a-vis Section 8(1) of the OEA Act leads to the irresistible conclusion

that a tenancy right never vests in State; whereas a title or ownership right vests in State under the aforesaid Act. After vesting, a property becomes that of the State and has to be settled under the provisions of the OEA Act within the time specified therein, and after lapse of that time under the Lease Principles or Circulars issued time to time, but such settlement has to be made only with persons entitled to that in consonance with Sections 6 and 7 of the OEA Act, and not in favour of tenants. of course, State has the right to settle the lands also in accordance with the Orissa Government Land Settlement Act and the Rules framed there under or any other Act or provisions/Notifications/Rules with persons who satisfy the requirements specified therein. Thus the Tahsildar committed gross error of law and his order being palpably illegal could not be sustained in law. Consequently the order of the Sub Collector according approval to the order passed by the Tahsildar was unjustified. But then, the Sub-Collector after coming to know the error committed by him recalled the order of his approval and remitted the matter back to the Tahsildar for de novo disposal.

11. There is some force in the submission of the learned Counsel for the Petitioners that there is no provision for appeal to the ADM under the OEA Act. But then the order appealed against was not passed under the OEA Act, but under the Lease Principles. That apart, the Petitioners themselves having filed the appeal before the ADM are estopped from raising the said stand before this Court now.

12. A cumulative assessment of the materials available on record thus leads to an irresistible conclusion that an order passed by the Tahsildar settling the disputed land with the Petitioners who claimed to be tenants was unknown to the OEA Act. The question as to whether the Petitioners were tenants under the ex intermediary or not had to be first determined on an administrative enquiry by the Tahsildar after giving opportunity to the ex intermediary and such other persons and the Petitioners to place materials before him for arriving at such determination. That apart, the Sub-Collector and also the ADM have only remitted the matter back to the Tahsildar for de novo disposal after due enquiry and, as such, no prejudice shall be caused to the Petitioners if during enquiry by the Tahsildar opportunity is granted to them as well as the ex intermediary Deity to make their respective submissions based on documentary evidence, and this Court directs accordingly. This Court further directs the Tahsildar to complete the exercise within a period of six months from the date of communication of this judgment.

13. With the aforesaid observation/direction this Court disposes of the Writ Petition.

B.P. Ray, J.

14. I agree.